

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**WASEEM DAKER,**

**Plaintiff,**

**VS.**

**BRIAN OWENS, *et al.*,**

**Defendants.**

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**CASE NO. 5:12-CV-459 (CAR)**

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**ORDER**

Plaintiff **WASEEM DAKER** has filed at least twenty-six motions requesting either preliminary or permanent injunctive relief, or both. (ECF Nos. 3, 8, 25, 28, 29, 47, 56, 89, 100, 131, 154, 155, 160, 181, 182, 183, 184, 185, 186, 192, 193, 194, 209, 223, 244, 245.) Plaintiff is, once again, appealing the District Court's denial of ten (ECF Nos. 25, 28, 29, 47, 56, 89, 100, 117, 118, 119) of these motions and has filed a motion to proceed *in forma pauperis* on appeal. (ECF Nos. 256, 270.) The District Court denied these ten motions more than two years ago. (ECF Nos. 134.) Plaintiff's previous appeals from this Court's denial of preliminary or permanent injunctive relief have either been dismissed for want of prosecution or the District Court's denial of relief has been upheld.

Plaintiff filed his first motions for preliminary injunctive relief when he filed his 42 U.S.C. § 1983 action, or shortly thereafter. (ECF Nos. 3, 8.) On June 28, 2013, the Court adopted the Magistrate Judge's Recommendation and denied these two motions. (ECF No. 69.) Plaintiff filed a Notice of Appeal from the Court's June 28, 2013 Order. (ECF Nos. 82, 84.) Seven days before he filed his Notice of Appeal from the June 28, 2013

Order (ECF No. 82), Plaintiff filed a Motion to Vacate or Amend the June 28, 2013 Order, which he later supplemented twice. (ECF Nos. 80, 87, 102.) On January 16, 2014, the Court denied his Motion to Vacate or Amend. (ECF No. 113.) Plaintiff filed a Notice of Appeal from the January 16, 2014 Order. (ECF No. 120.) The Eleventh Circuit dismissed the appeal in Case No. 13398-D for want of prosecution. *Daker v. Comm'r, Ga. Dep't of Corr.*, No. 13398-D (11th Cir. May 7, 2014); (ECF Nos. 84, 147).

On March 21, 2014, the Court adopted the Magistrate Judge's Recommendation to dismiss Plaintiff's action without prejudice based on his accrual of three strikes under the Prison Litigation Reform Act ("PLRA"), denied Plaintiff's motions for preliminary injunctive relief,<sup>1</sup> denied as moot his requests for permanent injunctive relief,<sup>2</sup> and denied his pending supplement to his Motion to Vacate or Amend the June 28, 2013 Order. (ECF No. 134). Plaintiff filed a notice of appeal. (ECF No. 142.) The Eleventh Circuit dismissed this appeal for want of prosecution. (ECF No. 148); *Daker v. Comm'r, Ga. Dep't of Corr.*, No. 14-11571-D (11th Cir. May 9, 2014).

Plaintiff filed another Notice of Appeal from the March 21, 2014 Order, which included an appeal from the District Court's denial of his first two motions for preliminary injunctive relief. (ECF No. 149); *Daker v. Comm'r, Ga. Dep't of Corr.*, No. 14-12139-B (11th Cir.).

While his latest appeal was pending, Plaintiff filed two more Motions for

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<sup>1</sup> This included seven of the motions listed in Plaintiff's current appeal. (ECF Nos. 25, 28, 29, 47, 56, 89, 100.)

<sup>2</sup> This included three of the motions listed in Plaintiff's current appeal. (ECF Nos. 117, 118, 119.)

Preliminary Injunction and a Motion to Vacate the March 21, 2014 Order. (ECF Nos. 154, 155, 160.) In an Order dated June 18, 2014, the Court denied these three motions. (ECF No. 166.) Plaintiff appealed the June 18, 2014 Order. (ECF No. 167.) The Eleventh Circuit dismissed Plaintiff's appeal of the June 18, 2014 Order for want of prosecution. (ECF No. 170); *Daker v. Comm'r, Ga. Dep't of Corr.*, No. 14-13255-B (11th Cir. Aug. 20, 2014).

On May 4, 2016, the Eleventh Circuit, in Appeal No. 14-12139-B, determined that the dismissals analyzed by the District Court do not constitute strikes under the PLRA.<sup>3</sup> *Daker v. Comm'r, Ga. Dep't of Corr.*, 820 F.3d 1278, 1281 (11th Cir. 2016). It therefore vacated the District Court's dismissal of Daker's 42 U.S.C. § 1983 action. *Id.* The Eleventh Circuit, however, upheld the District Court's denial of injunctive relief. *Id.* at 1283.

After the case was remanded to the District Court, Plaintiff filed a Motion for Reconsideration in which he requested the Court to reconsider its denial of his numerous requests for preliminary injunctive relief. (ECF No. 179.) On July 28, 2016, the Court referred the case to a Magistrate Judge and denied Plaintiff's Motion for Reconsideration except to the extent that he requested an evidentiary hearing. (ECF No. 217.)

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<sup>3</sup> The Court notes that in *Daker v. Head*, No. 14-15150-E, a two judge panel reinstated Plaintiff's appeal based on the decision in *Daker v. Commissioner of Georgia Department of Corrections*. The two judge panel incorrectly explained that *Daker v. Commissioner* held that Plaintiff does not have three strikes. *Daker v. Head*, No. 14-15150-E, Order 2 (11th Cir. July 11, 2016). In *Daker v. Commissioner*, the Eleventh Circuit found that the six dismissals identified by the Commissioner and analyzed by the District Court do not constitute strikes under the PLRA. 820 F.3d at 1283-86. However, the Eleventh Circuit then specifically "express[ed] no view on whether Daker has any other strikes." *Id.* at 1286. In other words, the Eleventh Circuit left open the issue of whether Daker otherwise has three strikes.

Plaintiff filed seven “Emergency” motions requesting preliminary injunctive relief (Docs 181, 182, 183, 184, 185, 186, 192); in three of these he requested permanent injunctive relief as well. (ECF Nos. 181, 182, 183.) He filed five more motions (apparently non-emergency) requesting preliminary injunctive relief. (ECF Nos. 193, 194, 209, 244, 245.) Finally he filed one more motion (apparently non-emergency) requesting both preliminary and permanent injunctive relief. (ECF No. 223.) All of these motions are pending.

Plaintiff filed two “Amended Notice[s] of Appeal.” (ECF Nos. 230, 231.) In the first (ECF No. 230), he “amended” his April 4, 2014 notice of appeal (ECF No. 142) from the Court’s March 21, 2014 Order (ECF No. 134). The Eleventh Circuit dismissed Plaintiff’s April 4, 2014 appeal more than two years ago for want of prosecution. (ECF No. 148); *Daker v. Comm’r, Ga. Dep’t of Corr.*, No. 14-11571-D (11th Cir. May 9, 2014). More recently, the Eleventh Circuit declined Daker’s requests to set aside the dismissal of this appeal, reinstate the appeal, or let him proceed *in forma pauperis* on appeal. (ECF No. 268); *Daker v. Comm’r, Ga. Dep’t of Corr.*, No. 14-11571-D (11th Cir. Aug. 18, 2016).<sup>4</sup>

In his second “Amended Notice of Appeal” (ECF No. 231), Plaintiff “amends” his July 16, 2014 notice of appeal (ECF No. 167) from this Court’s June 18, 2014 Order (ECF No. 166) denying his motions for preliminary injunctive relief and motion to vacate.

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<sup>4</sup> As usual, Plaintiff was not deterred by the denial of relief and filed a motion for reconsideration of the Eleventh Circuit’s August 18, 2016 Order. The Eleventh Circuit denied the motion for reconsideration on October 3, 2016. *Daker v. Comm’r, Ga. Dep’t of Corr.*, No. 14-11571-D (11th Cir. Oct. 3, 2016).

Plaintiff appealed the Court's June 18, 2014 Order more than two years ago and the Eleventh Circuit dismissed that appeal for want of prosecution. (ECF No. 170); *Daker v. Comm'r, Ga. Dep't of Corr.*, No. 14-13255-B (11th Cir. Aug. 20, 2014). As in Case No. 14-11571-D, the Eleventh Circuit declined Daker's recent request to set aside its previous dismissal of this appeal, reinstate the appeal, or allow him to proceed *in forma pauperis* on appeal. (ECF No. 269); *Daker v. Comm'r, Ga. Dep't of Corr.*, No. 14-13255-B (11th Cir. Aug. 18, 2016).<sup>5</sup> This Court notified Plaintiff that the two appeals he sought to "amend" had already been resolved by the Eleventh Circuit. (ECF No. 235).

Still attempting to appeal the March 21, 2014 Order, Plaintiff filed a motion to appeal this Court's July 28, 2016 Order to the extent it denied his "Motion for Reconsideration from the March 21, 2014 Order (ECF No. 134) denying his motions for preliminary injunctions (ECF Nos. 25, 28, 29, 47, 56, 89, 100) and denying as moot his motions for injunctions (ECF Nos. 117, 118, 119)[.]" (ECF No. 256.) Plaintiff then filed a motion to proceed *in forma pauperis* on appeal. (ECF No. 270.)

In the Court's best judgment, an appeal from the Court's July 28, 2016 Order cannot be taken in good faith. 28 U.S.C. § 1915(a)(3). As shown above, Plaintiff has appealed this Court's denial of injunctive relief on numerous occasions. These appeals have either been dismissed or the District Court's denial of injunctive relief has been upheld. Having been carefully considered, Plaintiff's motion to proceed *in forma pauperis* on appeal (ECF No. 270) is hereby **DENIED**.

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<sup>5</sup> This denial, of course, led Daker to file a motion for reconsideration, which the Eleventh Circuit denied on October 3, 2016. *Daker v. Comm'r, Ga. Dep't of Corr.*, No. 14-13255-B (11th Cir. Oct. 3, 2016).

If Plaintiff wishes to proceed with his appeal, he must pay the entire \$505.00 appellate filing fee. Checks should be made payable to Clerk, U.S. District Court. Plaintiff cannot utilize the partial payment plan described under 28 U.S.C. § 1915(b) because the Eleventh Circuit has found—including multiple times in this case—that Plaintiff has three strikes and cannot pursue an appeal IFP.<sup>6</sup> *See, e.g., Daker v. Comm’r, Ga. Dep’t of Corr.*, No. 14-11571-D, Letter (11th Cir. Apr. 18, 2014), ECF No. 145; *Daker v. Comm’r, Ga. Dep’t of Corr.*, No. 14-12139-B, Letter (11th Cir. May 29, 2014), ECF No. 159; *Daker v. Comm’r, Ga. Dep’t of Corr.*, No. 14-132555-B, Letter (11th Cir. July 24, 2014), ECF No. 169; *see also Daker v. Head*, No. 14-132857-A, Letter (11th Cir. July 28, 2014).

**SO ORDERED AND DIRECTED**, this 14th day of October, 2016.

S/ C. Ashley Royal  
C. ASHLEY ROYAL, JUDGE  
UNITED STATES DISTRICT COURT

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<sup>6</sup> Similarly, the Eleventh Circuit and Northern District of Georgia have found that Plaintiff’s allegation of poverty is untrue. *See, e.g., Daker v. Warren*, No. 14-13042-C, Order 3 (11th Cir. Apr. 20, 2015); *In re Waseem Daker*, No. 1:15-cv-512, Order 1-3 (N.D. Ga. Aug. 17, 2015).